

BOARD OF ZONING APPEALS

Minutes

June 22, 1999

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:35 p.m., on June 22, 1999, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER, JOHN ROGERS, RANDY PHILLIPS, FLOYD PITTS and JUANITA SWANN WERE PRESENT. KEITH ALTER and DOUG MALONE were absent.

The following Planning Department staff members were present: Secretary, DALE MILLER, and Recording Secretary, ROSE SIMMERING.

Also present was J.R. COX, Office of Central Inspection, SHARON DICKGRAFE, Law Department.

FOSTER, called the regular meeting of the Board of Zoning Appeals to order at 1:35 time p.m. It was recognized that there were 5 voting members present which establishes a quorum. We had planned to have three cases today, one of them BZA 17-99 has been deferred and so we only have two cases to be heard today. The case of BZA 17-99 will be deferred until July 27, 1999. We first have the approval of the minutes of July 28, 1998. Talking to Rose I understand that we are catching up now with all the minutes. Do I hear a motion for approval?

1. ROGERS moved and PHILLIPS seconded to approve the minutes for July 28, 1998.

MOTION CARRIES 5-0.

2. Case No. BZA 16-99, Carriage Park Center Associates, L.P. and Cellular One, pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to reduce the compatibility setback to permit the construction of a 120 foot cellular communication tower on property legally described as follows:

The part of Lot 3, block 2, Central Avenue Plaza Addition, an Addition to Wichita, Kansas, Sedgwick County, Kansas described as commencing at the Southwest corner of said Lot 3; thence East along the South line of said Lot 3, 125 feet on a bearing of S 89 degrees 53'54"E; thence North at a right angle to said South line, 68.37 feet, said point being the Southeast corner of existing building; thence Northwesterly along said building, 3.47 feet on a bearing of N 85 degrees 32'33"W for a point of beginning; thence continuing Northwesterly along

said building, 68 feet on a bearing of N 85 degrees 32'33"W; thence Southwesterly at a right angle to said building, 25 feet; thence Southeasterly parallel to said building 68 feet; thence Northeasterly, 25 feet to beginning. Generally located north of Central, east of Edgemoor.

MILLER: Presents staff report and slides.

BACKGROUND: The applicant is required to file a variance request with the Board of Zoning Appeals, to reduce the height compatibility requirement for a 120 foot tower. The application area is located north of Central and east of Carriage Parkway in the Carriage Park Plaza shopping center. The code requires the applicant to provide a setback distance of 305 feet from the adjacent "SF-6" zoning district located to the east, which is a drainage ditch. They are providing 120 feet of setback. There are residential units located east of the drainage ditch, approximately 350 feet from the proposed tower location.

The applicant proposes to amend Parcel 3 of the Central Avenue Plaza CUP (DP-126) to allow, as a permitted use, a 120 foot communication tower and to rezone 1,700 square feet from "LC" Limited Commercial to "GC" General Commercial. Parcel 3 of this CUP is currently limited to general office and retail uses. Carriage Park Plaza has developed along a north-south axis, with two major sets of buildings facing each other, across Carriage Parkway. The tower would be located on the south end of the east row of buildings. This façade has one opening, a door, and 18 parking spaces.

The applicant has submitted a site plan, which shows two 12 by 20-foot buildings, each of which could be used by two separate carriers, and another 8 foot by 12 foot pad site for a third potential carrier. The 120-foot "monopoly type" tower would be located in the middle of the site. The applicant's agent has stated there will be an eight-foot tall chain link fence constructed, which would enclose the area between the buildings. The communication tower will be constructed over eight existing parking spaces. Based on the original construction plans there will be sufficient parking still provided on Parcel 3 (26 extra spaces), even with the loss of these eight spaces. Since parking standards are not specifically listed for communication towers, the Superintendent of Central Inspection will need to interpret which parking standard shall apply.

The Unified Zoning Code permits communication towers in the "GC" General Commercial and more intensive districts "by-right." However, the Zoning Code requires the applicant to provide the following information:

- (1) There is no available space on existing or approved towers or other structures, which can be utilized to meet the applicant's communication needs.
- (2) There is no other physically and/or fiscally feasible opportunity to rebuild an existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site;

- (3) The owner of the tower shall agree in writing at the time of the issuance of a building permit the following;
- (a) That the tower is designed to accommodate at least three communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and
 - (b) The owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.

Planning staff retained the services of a third party consultant to review requests for towers. Their report is attached. The consultant's conclusion was this site is reasonably necessary for Cellular One service. The MAPC approved their request, subject to conditions. Those conditions are attached, including the requirement to install a foundation and tower base with the ability to support a 200-foot tower.

There are commercial and office developments located to the south, north and west on property zoned "LC." East of the application area is a drainage dedication, Ash Briar Residential Development and the Plaza Office Park. The nearest residential property in Ashbriar is 350 feet from the proposed tower.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC"	Retail shopping center
SOUTH:	"LC"	Office Building
EAST:	"SF-6" and "GO"	Condominiums and Plaza Office Park
WEST:	"LC"	Retail shopping center

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as this site is one of the few in the Central and Oliver area that is sufficiently buffered by non-residential uses and vegetation, and set back sufficiently from dwelling units and major streets, to be suitable as a tower location.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as it is approximately 350 feet to the nearest residential uses. There is a drainage ditch located in between the application area and the residential uses. The remaining three sides are non-residential uses and part of the Carriage Parkway Plaza shopping center.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as this wireless carrier, as well as other carriers, have been looking for sites on which to locate antennas to improve service in this general location. To date they have not been successful because of lack

of suitable locations and neighborhood opposition.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as effective wireless phone service is viewed as a needed public service.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch the site is sufficiently buffered by commercial buildings on the north and south, and residential uses are far enough away to meet the intent of the setback requirement.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The site shall be installed in substantial conformance with the site plan submitted with this variance request and consistent with other applicable provisions contained in the Community Unit Plan or its amendments.
2. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any or the foregoing conditions.

MAPC Conditions of Approval

1. The site shall be developed in general conformance with the approved site plan, with an eight-foot tall wood fence constructed around the perimeter of the site. The 68 foot by 25 foot area shall only be used for a communication tower and related equipment.
2. All requirements of Section III.D.6.g of the Unified Zoning Code shall be met.
3. The applicant shall file an administrative adjustment to increase the permitted commercial square footage permitted on Parcel 3 to 79,376.
4. The applicant shall file a variance request to reduce the compatibility height requirement from 305 to 120 feet for a 120-foot tall communication tower.
5. The tower shall be a monopoly type tower and not exceed 120 feet in height with the footings constructed in order to provide for the possible future expansion of the tower to 200 feet.

FOSTER: The second item, adjacent property, refers to the nearest residential use is 250 feet. According to CPO and Mr. Ewy, the report talks about 470 feet away from the nearest residentially zoned and developed lot.

MILLER: He may have a better distance than what I had. I just scaled it off our aerials and they are only tied down to three corners. They are not scaled to the exact nth. They are rough approximations.

FOSTER: You will alert him to that question. Other questions for staff?

PHILLIPS: Are the MAPC conditions made a part of this approval process?

MILLER: It really does not apply to this in the sense that it is the setback compatibility standards that are in question. If you wanted to, you can make that a condition of it. But they would apply irrespective of what you do here.

PHILLIPS: So, regardless of this, those conditions of MAPC approval are already in place then?

MILLER: Yes, this is a double jeopardy. If this is not approved, the Planning Commission approval probably does not mean a whole lot to them.

PHILLIPS: The approval for going to a future site or the approval of this thing based on putting in a foundation for a 200-foot tower. This does not carry a 200-foot, neither of them carries an approval of the 200-foot tower at this point. Is that correct?

MILLER: You mean the Planning Commission or ours?

PHILLIPS: Either one.

MILLER: Planning Commission authorized them to go to 200 feet. At this point they are only asking for 120 feet and so that is what we are basing the variance on.

FOSTER: If they went to 200 feet would they have to come back then?

MILLER: Not under our current process.

PHILLIPS: The application is written for 120 feet. If they go to something beyond that they will have to come back?

MILLER: The interpretation that we have been operating under is, that once a tower is there, if they needed to go higher and they can justify the need for that, in terms of additional carriers, that they can put it on there. Central Inspection has been issuing permits for the towers to be either rebuilt or increased in height without requiring a rehearing.

FOSTER: You may want to answer this more at the end of our meeting. This is in a P.U.D.?

MILLER: It is in a C.U.P. Community Unit Plan.

FOSTER: Why can't the Planning Commission handle this? Why do they have to send it to us as a compatibility setback? Why can't they handle it under the C.U.P.?

MILLER: Under the current ordinance they do not have that authority. But under the proposed amendments, they will have.

FOSTER: The amendments passed the other day?

MILLER: Yes, but they have not been to City Council yet, if those are approved by the governing body, then, you would not see these particular kinds of cases that involve Community Unit Plans.

FOSTER: That further explains what we talked about last time and these would be modifications that the Planning Commission could handle.

MILLER: That is correct.

FOSTER: Any other questions of staff? Thank you Dale.

PITTS: At some point and time before we take a vote on this, I am going to need to know if Dale has any information on what Section 704 of the Telecommunications Act of 1996 says that pertains to this case.

MILLER: Where is that indicated?

PITTS: This was in the material that you provided us in preparation for this case from a third party, and references are made to this throughout his report.

MILLER: I may not be totally correct. But what I believe is the case is that the Telecommunications Act of 1996 is some 96 or 103 pages long. The only part that really applies to the siting, and the criteria for siting, is Section 704 of the Telecommunications Act. That is the part that lays out the rules under which local governments are allowed to even review these requests, that is what that has to do with. Part of that has to do with that the federal government has presumed on your behalf that telecommunication services are a needed service and so you can't just deny them without good reason. There has to be considered and thoughtful explanations on why you would make a denial. They have also presumed on your behalf that people can not use the argument that the electric magnetic waves that come off of these cause illnesses, and then base a denial on that. It also assumes that you will handle these request in a timely manner and that you will not sit on it and not act on it. There are a couple of other things, I know that there are five conditions that are covered in that. I can not remember all of those off the top of my head. That is all in Section 704.

PITTS: Thank you.

FOSTER: Any other questions for staff? Thank you Dale.

RUSS EWY, BAUGHMAN COMPANY, 315 ELLIS: As Dale mentioned, we are asking for a waiver for the compatibility setback standard of the Unified Zoning Code. I might start at clarifying a few points that were made during the questioning of staff. My reference in the CPO minutes refers to the fact that our application area located here is 350 feet to the nearest residential use. The zoning code in dealing with these compatibility height setbacks standards, deal in zoning district to zoning district. Not use to use. This property here, approximately, making up the southern two-thirds of what is Ashbriar Estates Condominium Association, is zoned "MF-18" which would not trigger the section of the code that we are wishing to vary. This lot here, which is approximately 480 feet from the tower, is the first single-family "SF-6" zoning district which would trigger that compatibility height setback. That was my statement at CPO. We have this finger shaped unplatted tract of ground that comes generally in here. Our contention is, that similar to other variances of this very same section of the code for other cell carriers, what we have intervening and triggering the compatibility setback standard is a piece of ground that basically can not be developed as currently zoned. The weight of this finger as it draws closer and closer to our site, ranges from 40 to 50 feet in width. Due to the size and awkward shape of this tract it almost seems impossible to have platted that or to plat that into single-family lots. Which would as I mentioned trigger this section of the zoning code. We are asking for relief from counting this piece of ground triggering our compatibility height setback. We feel that with this exception we very much meet the spirit and intent of that setback as it relates to residential homes close to these tall structures. We would be well within that 350 feet to the nearest residential use.

FOSTER: So both statistics are correct? 470 and 350 are both correct?

EWY: Yes, one is to a use and one is to a zoning district. That was the only reason for that difference. They are all developed as the Ashbriar Condominium Association. We are dealing with the same sub-division being effected. As Dale mentioned, the history of this, case we have received unanimous approval by the Planning Commission, as well as the CPO. We have spent a considerable amount of time over the past 12 months, if not intensively over the past four months, attempting to solicit comments from these people in Ashbriar and receiving none and are moving forward. Dale is also correct in that amendments proposed to the zoning code would not bring this type of case to this body, being that it is in a C.U.P. I thought of something Mr. Phillips questioned, that I forgot to address. We are only allowing through the zoning case that is pending in front of City Council here in the next few weeks to a height limit of a 120 feet. Regardless to whether or not we have to come back before the BZA or not, we would still have to apply for and be approved for a C.U.P. Amendment to allow any height greater than that 120 feet. That caps us, although we are building the structure to support 250 feet.

FOSTER: Question for Mr. Ewy by the Board? This must be your lucky day. Are there other members of the public here today that want to speak to this particular case? All these people are here and nobody for this case? Doesn't look well for the next case.

PITTS: If we may ask Mr. Ewy to return I do have one question. I do not know if the person to direct this question to is you. I would like to know if any communication has been attempted with USD #259 to use any of their existing towers?

EWY: Extensively over the past 14 months, exhaustively in the last month. Planning staff has appealed to USD #259 to see if there was any hope, whatsoever, of having the opportunity for a private carrier as Cell One to either go attach their antenna on the existing structures or rebuild structures and allow the school district free use of that new tower. Based on prior zoning cases here this calendar year, that option seems to be very, very, remote. I might add and Dale can correct me if I am wrong, the City is commissioning a study of the entire cell tower land use issue within the City of Wichita and surrounding areas of Sedgwick County. I would imagine that through that process there will probably be policy statements made attempting to solicit a little bit more cooperation from the school district among other people for that very use. To be able to build or relocate towers on USD #259 communication towers. As of now, that seems to be a door pretty well shut.

PITTS: Shut by whom? USD #259?

EWY: Yes Sir. They are not willing to sign an application to join as a co-applicant in any zoning for a new cell tower.

FOSTER: I think we ought to ask Dale, although Dale was not here as the staff person at the time. One understanding when we went through 47 tower cases for the school district and it took a year and a half, it was understood that they would allow other uses on their towers.

PITTS: That was my understanding.

PHILLIPS: I remember at least from my hearing all those cases and trying to consider the fact that we were going to have a rash of these things going up. I remember specifically and we could look back at the minutes. As we see application made we have school district not honoring that commitment. I would like to know about it.

MILLER: This particular site, the Robinson School site, there has been extensive dialogue between the principal at the school, the school administration, the carriers, speculatively tower builders, and we have letters on file from Robinson saying not only "NO" but emphatically "NO". The school administration has turned the issue over to each individual school site board. Our understanding is they have met and decided that they do not want any other carriers on that particular site partially because of the way that their antenna is built today. The tower is next to a building. It is my understanding that Cell One has looked at that tower and there are technical problems with trying to rebuild on that particular location, where it is next to the building. They have not been willing to give up the space, at least one other tower builder said, that he would have had to have on the school grounds in order to provided enough space for the cabinets on the ground for additional carriers. Where they felt like they were going to be eating up most of the playground area in order to accommodate that particular proposal.

PHILLIPS: You are talking about one specific instance though. What we are talking about is a general broad statement that was issued and was one of the conditions of approval. I would like to know because it may allow us to look back on some of these things. I do not want to penalize anybody. But, if we issued the approvals on good faith as we talked about and went through the process, and the school board is changing that from their end of the bargain I would like to know.

MILLER: As each one of these come in, we are looking at it on a case by case basis to make sure what the options are. The one that was deferred today that in fact is being deferred because of that issue partially and trying to clear up with a different school.

PHILLIPS: They came in collectively and sought these approvals. If they want to split these up and administer these things individually, that is great, but we did not issue these things from a standpoint. We looked at them individually. The thing is they got the approvals as a single entity. I would like to know from the meeting minutes if they are and I am sure that there are references in there that yes they would allow other people to utilize those particularly the 150-foot towers.

MILLER: I think the one at Robinson is only 60 feet tall, I believe.

PHILLIPS: There were 100-foot towers and then there were 150-foot towers. At least that was the applications that I remember. Without delaying this application and I do not want to attach that to it and maybe we can come back to that. I would like to at least have some documentation for our minutes that it was there so we can corroborate that.

FOSTER: Mr. Ewy, do you have more on this particular issue?

EWY: Robinson, first of all, was not an original BZA allotment of towers. From what I understand, being on staff at the time, although not being the staff person for BZA. The variance was very specifically for a public and institutional use verses my client's particular use which is a commercial communication company and whether or not that negated the variance if you put a commercial carrier on what was originally interpreted to be a public and institutional use.

PHILLIPS: Let's just get the wording and we will know how to react if there is anything that comes up in the future.

FOSTER: Dale, are you satisfied in this case that they have checked into that then?

MILLER: Yes.

FOSTER: We will confine our discussion to our Board. I suppose that we should be in relation to Mr. Pitt's point that the staff has provided us with this extra third party material which is very explicit about saying that this is about the only site. In other words it couldn't be moved so to speak to another location very close by. That is what the federal act speaks to.

PHILLIPS moved ROGERS seconded: That the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report. Also note that as stated by the applicant that as a part of the recommendation and the condition 1 and 2 there that he did state that they would build only to the 120 foot height and that anything beyond that would require the C.U.P. Amendment.

FOSTER: I would like to point out that it makes it so much easier, the distance from the residential area and the fact that the drainage ditch was to the west there and it makes it a lot easier case.

MOTION carries 4-1. Pitt's votes no.

FOSTER: I might point out that those that are coming up for the next case that it does take 4 votes to pass a Board of Zoning Appeals case otherwise it is continued on to another meeting.

3. **Case No. BZA 17-99**, YMCA of Wichita, c/o Dennis Schoenebeck and Cellular One, c/o Bill Ames (Owner and co-applicants). Case is deferred until 7-27-99.
4. **Case No. BZA 18-99**, Boyer Wichita Medical L.C., pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to allow a reduction of the compatibility setback requirement in order to develop a new medical building of property legally described as follows:

Lot 1 and 2, Block 1, Lancaster Addition, Wichita, Sedgwick County, Kansas.
Generally located east of Hillside and south of Country Club Place

MILLER: Presents staff report and slides.

BACKGROUND: The application area is the block located east of Hillside and south of Country Club Place, except the southeast quarter of the block and the extreme eastern end of the block fronting Orchard and Holyoke Avenues. This property is the site of the proposed Wesley Family Practice Center, a new medical facility to be located on that part of the block with "GO", General Office zoning. The proposed building is to be a one and one-half story facility with approximately 15,375 square feet of space. The building is to be located in the middle of the north half of the block, with parking to be located on the western portion of the property, closest to Hillside. The main entrance to the building is to be located on the West Side, facing Hillside.

Four homes remain in the southeastern one-quarter of the block on property zoned "TF-3", Two-family Residential. The "Unified Zoning Code" requires a minimum compatibility setback of 15 feet plus one foot for each five feet of lot width over 50 feet, with a maximum setback of 25 feet along side or rear lot lines where non-residential uses are adjacent to property zoned "TF-3" or more restrictive. To comply with the compatibility setback standard, the proposed building should be located 25 feet from the "TF-3" zoned property. The proposed building is to be located within 8 feet of the lots zoned "TF-3" located along the applicant's southern property line. Currently there is a 10-foot utility easement along the applicant's southern property line and a 5-foot utility easement along the northern end of the residential lots. This easement has overgrown with volunteer trees and shrubbery. The applicant has received a hold harmless agreement for a portion of the building to be located in the utility easement.

The eastern end of the building complies with the setback requirements, however the Dumpster is shown as being located within 15 feet of property zoned "TF-3". The Unified Zoning Code requires dumpsters to be located a minimum of 20 feet from property zoned "TF-3" or more restrictive.

Land to the north is zoned "GO", General Office (vacant) and "TF-3", Two-family Residential (residences). The land to the east is "TF-3", Two-family Residential and developed with homes. Land along the south is zoned "TF-3", Two-family Residential and "GO" General Office and is developed with residences and medical facilities.

ADJACENT ZONING AND LAND USE:

NORTH	"GO", General Office and "TF-3", Two-family Residential; vacant and residences
SOUTH	"GO", General Office, "TF-3" Two-family and "B", Multiple-family; residences and medical office
EAST	"TF-3", Two-family Residential; residences
WEST	"GO", General Office; Offices

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as it is an irregularly shaped ownership which previously had been developed with a number of single-family homes. The homes were purchased and the site rezoned to "GO". There are some utility easements with utilities that would be expensive to relocate if the building were to be located on the western portion of the site where it might be possible to meet the setback requirements. Such a site layout would place parking closer to the remaining residences.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the proposed building will be one and one-half stories in height, approximately 14 feet in height. This height is much lower than the 35 feet permitted in residential zoning districts. The site layout has placed parking as far away from the residences as possible, thus minimizing parking lot activity from spilling over to adjacent homes. A screening fence 6-8 feet in height will be placed along the east and south property lines to minimize light and sight impacts created by a parking lot.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as moving of the utility easements would be an expensive and possibly project killing expense. The location proposed by the applicants is possibly the only way to locate a building of the size needed. The building is located as close as possible to Country Club Place. Staff considered the possibility of reducing the setback along Country Club Place to pick up additional space along the south property line, but decided it was not in favor of reducing that setback. Staff feels that it is more appropriate to reduce the setback along the rear than in the front. A reduction in building space would result in reduced health related service.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as it is in the public's interest for medical services to be available.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch the provisions of the code are meant to provide a buffer to minimize noise, light, odor intrusion or the placement of buildings which are out of scale too close to residential uses. Given the fact this building is to be some 14 feet tall and the building will act as a buffer for parking lot activity and a screen fence is to be installed, the granting of this variance will be consistent with the spirit and intent of the ordinance.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the compatibility setback from 25 feet to eight feet be granted, subject to the following conditions:

1. Maximum height of the proposed building shall be 14 feet at the subject setback line, and the site is to be developed in substantial conformance with the site plan submitted with this variance request.
2. The Dumpster on the east property line shall be moved to comply with the 20-foot compatibility site design setback requirements for dumpsters.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any or the foregoing conditions.

FOSTER: Dale, you have not mentioned the CPO meeting or report.

MILLER: CPO recommended Denial.

FOSTER: Evidently the applicant was not present at the CPO meeting and that recommendation is based on neighbors present.

MILLER: I would assume so. I was not present there either so I do not know for sure.

FOSTER: On the site plan, I hate to ask such a simple question but I can't find the North arrow. Which end is up?

MILLER: The top is north, Country Club Place would be the street on the north side. I had to shoot this down from a larger piece of paper and I guess I did not notice.

FOSTER: You lost the North there a little. Do we have questions for the staff?

PITTS: Mr. Chairman, I also hesitate to ask such a simple question, but, the request that has been made of us is the reduction in the compatibility setback requirements and the compatibility site design requirements, can you elaborate on what the site design requirements request is?

MILLER: I am guessing that when I did that front sheet that it was off of another one and I cut and pasted poorly.

FOSTER: Good answer.

PITTS: So are you saying that the compatibility site design requirements is something that we are not to address?

MILLER: Correct. It is just the setback requirements.

FOSTER: We are involved with only the five-foot distance.

PHILLIPS: That is one of the things that I wanted to ask about. Because, actually, as the application is written, because of the width of the lot, it says as stated actually it should be 25 feet from the "TF-3" zoned property and it says the proposed building will be located within 8 feet of the lots. It talks about the hold harmless for the ten-foot utility easement, but as I look at the site plan, it shows that it is actually off of that south easement. There is a little note about it being 12 feet there and it looks as though that hold harmless applies to the easement that the building sets on that runs north and south.

MILLER: Let me show you, it is awfully hard on the small one to see. The main part of the building is <TAPE CHANGE>. South end right there, those two little deals there are just screening walls that actually place it within eight feet of the property line.

PHILLIPS: So the main building itself is 12 feet away.

MILLER: The main building is set away.

PHILLIPS: So the hold harmless on the utility easement applies not only onto the north-south utility, but those two intrusions by the small extensions of the buildings there?

MILLER: Yes. The hold harmless is just for those two screening walls.

PHILLIPS: Just to clarify Mr. Pitt's questions, it is from 25 feet to 8 feet?

MILLER: Yes.

PHILLIPS: Not 15 to 10.

MILLER: Yes. It should be 25 feet, that is what it requires.

FOSTER: Dale, the residences in question are located to the south of this page then?

MILLER: Correct, and to the east, there are some on the eastside as well. Showing slides again. These homes here, and then up to there, this would be Country Club here so those homes there and it is kind of a "L" shape that wrap around the proposed application.

FOSTER: They would wrap around on two, like ½ sides of this street?

MILLER: Yes, on the eastside and part of the south side.

FOSTER: How many houses?

MILLER: I do not know that I counted them. The audience says "Six".

FOSTER: Any other questions of staff? Thank you, Dale. We will open this up to public discussion. Who would like to speak for the applicant?

BAUGHMAN COMPANY, %RUSS EWY, AGENT: Also in attendance is the property owner's architect, as well as the property owner, Mr. Summerhays, himself. Just a point of clarification, this is a request to vary the compatibility setback standard from 25 feet would be required to 10 feet with the building being located some odd 11 feet off that property line.

MILLER: It needs to be 8 because of the screening wall.

EWY: As Dale, mentioned, Lancaster Addition was zoned and platted sometime ago, "GC" General Office uses. The intent, I assumed had always been to develop some sort of medical accessory type use on the site. The site is unique, in the fact that it is "L" shaped. Thereby, creating a situation that requires some site design elements that people do not take into consideration with the building and the like, as well as, the orientation of the parking into play as much as it does with a situation quite like this one.

I want to also point out that we had received approval, not only of the zoning in the past, but, we had also, this group had Boyer Wichita Medical L.C., received approval of a vacation of one of the many utility easements running through this property. At that time it was obvious that we intended to build a medical facility, this distance away from the property line. We received approval of that vacation; I must say a year ago, I am not sure of the specific date. After that, as normal progression of development, the architects were hired to design the site. After designing the site, they had met with us; Baughman Company, as well as Plan Examiners from the Office of Central Inspection again to determine whether or not they had met all criteria in order to be issued a full building permit for construction of this medical office facility. After preliminary review of the plans as submit we received basically full approval to go ahead to submit our building plans for final building permits. It was upon that last submittal to OCI that we encountered the fact that we had this compatibility setback standard that we needed to comply with.

We have already been issued grading permits so that the site is currently being graded. The existing homes under the Boyer Wichita Medical, L.C., ownership are in the works of being removed and the site is being prepared for construction, so understand that we are working with

this design with some degree of anticipation that we were cleared of all zoning code requirements.

I would like to jump to this application. We applied for this variance; we were set to meet at CPO (1) this last week, a week ago yesterday. As, I did to the people in attendance, as they well know, simply missed that meeting. I was at CPO (2) addressing the cell tower, the first BZA case that you had on the agenda. I myself simply failed to act appropriately and obtain someone else to fill in and address this issue in front of CPO (1) and a lot of the people in the audience. After realizing my error, I placed a call to the CPO office to obtain a list of all those that spoke or had questions concerning this matter. I obtained that list, put together a letter of apology and basically served as an invitation to meet with me at their convenience to address any of their issues to show them exactly what we proposed on building out there. I had the opportunity late last week to call a few of them and stop-by and deliver a packet of information, as well as, the letter to several of them. I had the opportunity to speak to two of them. Again, I offered to meet to address any concerns that they may have over the materials that I left with them.

In that letter, I specifically apologized, to not only them, for wasting their time last Monday, but, also to the CPO members who had to deal with confusion left by not having the applicants agent in attendance. As well as, to the client Mr. Summerhays and the Boyer Wichita Medical, L.C., for failing in my responsibility to appropriately represent this matter. So having made that mistake and having tried to make attempts to rectify that mistake we are left with the issue of whether or not this particular variance, this request that we are asking for is a valid one. This is obviously the official hearing, and I would hope, that we would be able to discuss this issue, in a manner, which will at least overcome the CPO recommendation. It was a recommendation based on the fact that they did not have any information on which to make a responsible recommendation. Hopefully, we will be able to address all of these concerns that the people that were in attendance of that meeting and I assume are all in attendance here today. And we will be able to hear some of their concerns after my presentation.

Getting back to the specific issue at hand, Dale, did you happen to issue the drawings? You have elevations that I was able to find of the structure itself. I might point out, something that is not self-evident on these elevations, note the lower elevation, which is the southern elevation. We are dealing with a light earth toned EFIS building that is going to have a little bit darker band around the bottom of the building. It is going to be an appealing color. It is going to be relatively unobtrusive from a color standpoint. As Dale mentioned, at the southern elevation and for some distance back, as you can see, on the east elevation the top of the wall is going to be 14 feet, relatively a low-scale building. It rises to 18 feet there toward the center; you may want to note. That is the structure that we are looking to develop on this site.

Again, we are required to build a six to eight foot screening fence and we will do so along the east, south, and the southern-eastern property lines to screen from these residential homes. As you can tell, Dale, did you have a copy of that larger site plan? Or a slide made of that?

MILLER: No, they have a small one attached.

EWY: The small one attached shows a limited amount of our landscape plan. You can see that we are planting a group of trees to the southeast corner of that lot. We would also be willing, although there are some draw backs to planting additional landscaping further along that southern property line. We would basically be within those utility easements and at that mercy of the utility companies, as well as, the City of Wichita Water and Sewer Department, for the maintenance of those trees. I believe that this is something, we would be able to perhaps add some additional landscaping if that were a requirement to further buffer the site than what buffering that is already proposed. I guess at this point, I would be more than happy to answer any questions. Again, I would like to point out, the architect, and property owner are also in attendance for any questions that you may have of them.

PHILLIPS: On the elevation, it shows that you have got a view out there along the south and it appears to be an airway. Is that the extension on the building that Dale had indicated?

EWY: Yes. I thought those were permitted structures within that setback.

PHILLIPS: That is a utility easement along there. That is the hold harmless that you have that you can extend that there?

EWY: Yes. Those are window wells. Those are not really true view outs.

PHILLIPS: You view out the windows don't you? I know the difference between a window well. But, it is not apparent on the site plan that those are there. In fact they are not configured. You have got one shown on the elevation according to Dale; it looked like you have got two of them. I just need some clarification on this. But, I am wondering how we have got an application but it does not match the elevation. The elevation shows one long one along there and the site plan shows two smaller ones here. It also appears as though on the elevation at least looking at the west elevation there appears to be a section through that area where it appears to be a little more than four feet encroaching in there. May I have a little more clarification on this?

DAVID DIXON, ARCHITECT FROM SALT LAKE CITY: In the early stages of the design, it was desirable to get as much of a window well there as possible and bring as much light into the building as possible. So, we were dealing with one large window well that hung out about four feet. As the process went along and the City told us that there were encumbrances involved because of the easement that we should reduce that as far as we could. We shortened it to just two window wells. Each of them with a pair of windows in them and we also made them a little less deep than we had them and thereby, they did not need to go out as far as they had. They only go out about three feet now. There are only the two them, they are only about five feet deep, so, the windows that are inside those window wells are way up high in the room, they do not go down deep as they were originally proposed.

FOSTER: They are outside the utility easement?

DIXON: They are within the utility easement about two feet. Our building is 11.1 feet off the property line. These window wells would poke in a couple of feet there. I think that it is desirable to have them in the building. It is not essential, the employees and people in the

building would like to have windows in the offices were possible. It is not a deal breaker for us.

PHILLIPS: I just wanted to point that out, so the rest of the Board was clear on that.

DIXON: We have an agreement with the City on how that would be addressed.

FOSTER: Mr. Ewy mentioned about the screening, could you describe that more about what that consist of?

DIXON: Let me first point out that on a medical office building of this type, we typically will put examination rooms around that perimeter and that is what we have. An exam room generally has a small window rather than an expansive glass. It will have blinds in the window because the patient wants privacy, and it will probably hardly ever be open. It is the sense that the window is there and there is some light coming in. As far as screening in a sense I guess I am thinking that the building itself does not require too much screening because it is providing some privacy in and of itself. We have provided for a six-foot cedar fence that runs continuously along those property lines. We read in the ordinance that we would be allowed to a fence six to eight feet tall and it is suggested that we do a solid screen and that is why we selected the cedar.

FOSTER: All the houses would be facing perpendicular from that fence away from it?

DIXON: That is correct.

FOSTER: Are there other questions for the applicant?

PITTS: On your elevation plans, am I misreading these figures? What are you telling us about, looking at the west elevation, what is the height from the finished floor to the wall?

DIXON: On the west elevation, we are taking a little scoop out of the ground and terracing down to expose more of the building on the northwest corner of the building as it faces out to that parking lot. That is generally an entrance way to that lowest level. The lower level does not encompass the entire building, it only occurs on the west end of the building and we wanted to scoop out some of that soil to get some light down into there and provide access. Depending on where you want to measure from the building, height may have some variation on that corner of the building. In general, down the entire south side of the building we are at the 14-foot height. We were able to do that because we had put a very short parapet on the wall at that point, and it is only about a one-foot high parapet. We located all of the mechanical units and anything that might not be attractive in the center of the building and screened that from view with a taller parapet wall, there in that location then, what we have out on the property line. It should be very low-key.

PITTS: Is this something that has been newly adapted? Where are they showing this elevation 114 feet?

PHILLIPS: The reference point is 100 feet for the finished floor. My only question is the grade along the south property there, where is that reference to your elevation of 100 in the finished

floor?

DIXON: Approximately six inches below floor level. Generally sloping away from the building for drainage. The one hundred is just a point of reference.

PHILLIPS: 114, is the same as 14 feet above the finished floor.

FOSTER: Any other questions for the applicant?

LYNN L. SUMMERHAYS, THE BOYER COMPANY: I realize our time up, I just want to give a brief-geneses of our options on this property. It is zoned and there will be a medical facility there. This does replace the existing Kansas School of Medicine, Family Practice Residency Housing Program. Which has been part of the program at Wesley for some time and they were three years late in providing them a facility that accommodates their requirement with the Kansas School of Medicine. It will go on this site. The question is, how it fits, and how it goes on the site. If we retain the building, we have looked at all the options, if we retain the building with the existing compatibility setbacks in the existing location, we would probably have to go two story, because we no longer have the width sufficient to produce the delivery. We have the capability to go 35 feet which is not a problem, it is less efficient, and it is a poor functional design, but that becomes an option. The other option is moving that building out to that west sector, in the diagram and we reviewed some of these options early on with the City and others. Here is County Club Place right here, Hillside Avenue the major thoroughfare and it would put the building out there but it would then relocate the parking immediately adjacent to all of the residence. The City's feelings and our feelings were that would be a greater intrusion in the residential area than would the single level building. We also felt that having the single level building would be less of an intrusion than having a two-story building. We are very disappointed because we take great focus in trying to accommodate neighbors needs and we feel very disappointed that we did not have a chance to dialogue and discuss with them at our previous meetings and hopefully we will have the privilege to responding to their concerns. I think we can successfully. I think the alternatives are not as beneficial to the residence as the plan that we have proposed. I am hoping that we will be favorably considered, but, invite the privilege of responding to any concerns that the neighbors have as they may.

FOSTER: Mr. Summerhays, were you at the Metropolitan Planning Commission when this was originally heard a year ago?

SUMMERHAYS: No, the Baughman Company represented us.

FOSTER: You were not there?

SUMMERHAYS: I was not.

FOSTER: I suppose there were a large number of citizens at that time or do you know?

EWY: I really do not know. Terry Smythe of our office represented that case prior to my being hired by Baughman Company.

FOSTER: I was just trying to determine whether all of these items had come out at that time.

SUMMERHAYS: I am sorry, I do not know Mr. Foster.

FOSTER: Any other questions for the applicant?

SUMMERHAYS: For us these are new issues. We were quite surprised. The setback issues did not come out by staff or by the Planning Commission themselves. This came up at the end of the day, as we would call it by the staff member who was very good and very sharp. He just found it where our engineer had not found it, nor or architect, nor the planning commission, previously after we were completely designed it was discovered so we find ourselves a little bit behind the eight ball. Respectfully of the process, respectful of the ordinance, and hopefully can accommodate any concerns within the existing plan.

SIMMERING: Mr. Chairman, David Dixon, do you have a business card Sir?

SUMMERHAYS: We will get that for you.

FOSTER: I would like to make one statement before we hear other people. You realize that the Board of Zoning Appeals, we are not necessarily involved directly in the architectural appearance of this building. You have heard color mentioned, or where windows are and things like that. We do have in front of us a staff report that talks about controlling 14 feet high and controlling setback and screening and things like that. But, you will hear an applicant tell you about architectucal features of the building and yet we are concerned about the overall site plan but not the architectural design details of the building and we do not have control over that. Who would like to speak to this variance case first from the audience?

NEDRA ROLL, 3236 ORCHARD: I live, let me see if I can find it on the slide.

FOSTER: We are limiting time to five minutes each because of the number of people. Since you are the first one I am going to give you a moment more than that.

ROLL: I would like to speak to three words that I have heard used repeatedly. One is compatibility setback, there has got to be a reason why that word was used. One word was hardship, was mentioned, everyone who has spoken so far has downplayed hardship among the neighbors, and impact, and these issues. Right now there is already an impact. Every tree that was between the sidewalk and the fence has been dozed. There were mature trees, probably between 25 and 30 that had been there for 50 and 60 years. They are gone, they are all piled up down at the corner and you can see them when you drive-by. These are going to be replaced by eight-foot tall crabapples maybe, this is not compatible, and it already has made an impact. The hardship comes in when the demolition starts and the building. I understand that there is even asbestos that is going to be torn down very soon. What we wonder about, if we were building a house, and we discovered after our architect had made the plans, and we had purchased the land that there was not quite enough room, what would we be told? We would be told, well, purchase some more because there is not quite enough room for this particular plan to come out even.

They are not being told that. Is it a double standard? Are the corporations, especially the large ones, allowed to just go ahead and "Oh Well", "It is Okay, because it is Wesley?" I have lived here for 26 years and I have seen it happen over and over again. The birth care center, there was a battle, we got a few things and it was a compromise. I do not see much compromise in this it is okay, let's let them build up to the property line. I would like some help on this, if there were some help available.

FOSTER: What would be your hope that they do in this case?

ROLL: Buy enough land out of our backyards to put the easement that they want, so that they can put their Dumpster where they want. I think they should have thought of the entire block before they started making this unique "L" shaped package. There is one more house that was part of Lancaster and it is down at the end on the corner of Holyoke and Country Club Place that is not being used because they didn't need it.

FOSTER: How deep are these lots?

ROLL: My lot is more than 60 feet to the back.

FOSTER: From your house to the back?

ROLL: No, from the street to the alleyway.

FOSTER: It is only 60 feet deep?

ROLL: I believe so, no, I believe that is partially because when the sewer line is run from the back of my house it is 60 feet.

MILLER: It is probably closer to 120 total depth.

ROLL: That sounds right. It could have made a good parking lot.

PHILLIPS: Listed on the plans, the west property line of the remaining residences it is almost 124 feet from property line to property line that is in question right now where the compatibility setback being enforced. As listed on the plan which does include some survey information there.

FOSTER: Any questions for Mrs. Roll?

PHILLIPS: You heard mentioned that in the previous discussion there were some options that they could consider. A preference obviously, one you are obviously discussing the setback here but there was a note that they could go to two stories and that the building could be 35 feet tall and be within compliance. Do you have a preference either way or would you express that for the Board here?

ROLL: I think that second storage issue is a lever. I think no one wants a two-story building across from him or her. We know because we have the Birth Care Center across from our front doors and beyond that we have a five-story parking garage. So we know what it is like to live with that. One story is good and of course you know that if that is the option I suppose that is what we would vote for. I would.

PHILLIPS: Thank you.

FOSTER: Who is next?

PHILLIPS: Pardon my intrusion here, as neighbors if you have additional comments please feel free to bring them to the Board. We do have a limited amount of time here. If you are simply repeating what the first person said you might just want to acknowledge that. We are happy to listen to any new information that you can share with us and any new comments. But to be repetitious that does not serve a purpose of either the public good or the Board, so if you would be mindful about that for anyone else who has to speak.

JAN MURCH, 833 & 835 HOLYOKE: Which are the corner two houses of the area in question. I agree with Nedra, on many of these issues, of course we are a tight neighborhood. We are going to be down to just six of us very soon. Several things that she did not address that I think are of up most importance. One is courtesy of which the companies in question have not had the courtesy to contact us. Yes, we did get a letter, late. It was 8:30 p.m., Thursday, evening when I finally got any information at all, including the landscape rendering. I am sorry, plans were made over the weekend, and they were not available to meet on such short notice. I am sorry that they did not think of us until the CPO meeting, to even consider the fact that there are people here that are going to have this building in their backyard, literally. I personally am concerned about the dumpster, it is going to be set directly in my back window, the bedroom window, of my house at 835 N. Holyoke. When they empty dumpsters, generally those are between 3:00 a.m. or 4:00 a.m. in the morning, this is not a really good time to have a dumpster emptied in your back bedroom window, when you are sleeping. We are all of course aware of the screen ordinance. Which obviously we have no concern for now, because, every single tree that was shown on the earlier slides are all gone. Every single one of the mature trees, there is nothing left. We do have issues of the safety of these houses being torn down. We had the houses torn down across the street from us on Orchard, a number of years ago, dirt, dust, asbestos, whatever flying all over the neighborhood. We have that concern again for health issues. The location has this building, literally, in our backyards.

FOSTER: I have seen those trees cut down. Would any of them have been in the area of this setback area that we are talking about?

MURCH: Some of those trees were along the alley easement.

FOSTER: Even though that was a utility easement?

MURCH: All the way up and down that alleyway there were trees in it. There were trees in the area where they are going to have the proposed parking lot. Some of those trees could have even been saved and utilized for that parking area as well. They were all bulldozed.

FOSTER: Just so I understand, in the area that we are talking about, in the compatibility area, there were trees?

MURCH: There were mature trees.

FOSTER: Were they on the easement that you are aware? The utility easement back there?

MURCH: Originally no, they were not.

FOSTER: In back of your property?

MURCH: Yes. Along the backside of my one house, that is correct, and along the backside of all the rest of the houses in questions, yes.

FOSTER: They have been removed?

MURCH: They are gone. They are piled up on the corner. You can go by and see them. Beautiful, mature, trees.

FOSTER: I just did not know where they came from.

MURCH: They came from there and all of the houses that were there. Then, in the lot that is on Hillside has been empty for a number of years and those houses have been cleaned out for another proposed medical site. Again, I have also lived in this neighborhood for 26 years. I have seen a lot go on.

FOSTER: Thank you, very much.

JACK GILLESPIE, 3228 ORCHARD: I have two primary concerns, and they both involve setback. The zoning, my understanding in Wichita, is that they have to set the building back 20 feet from Country Club. They also have to have a compatibility setback of 25 feet from the property that I am concerned about at 3228 Orchard. The only analogy that I could come up with that is they are trying to put a size 12-foot in a size 11 shoe. They knew this way back. I want to make a comment about two statements that were made here. One that they are providing health services to the community. This is a residency program. To train doctors to go out into other communities and work. It is the KU Residency program. The other thing that was said, that would make you believe that they don't have a place to work now. They are in a building at the corner of Vasser and Central that was remodeled about seven years ago and they have been there for quite awhile. The vacated property that was brought up, this property was vacated by the city in July 1986, back to the property owners. At that time they were told that they could go clear out into the alley and build storage sheds and whatever they wanted to on it. To this date, I had not heard anything about it until it was mentioned this morning that the vacation had been

taken back. That is all I have.

PHILLIPS: Mr. Gillespie, where is your property in reference to the application area?

GILLESPIE: I think this would be the house.

FOSTER: Is it your intention that the zoning is being applied wrongly here? In terms of the dimensions?

GILLESPIE: I do not see how they could have put the building the way that it is currently engineered in the location as far as the dimension go. It appears to me that the building was designed, the property was bought, and they thought, we would ask for a variance later. Which I know goes on all the time. Sometimes, it is opposed and sometimes it is not. But I do not think that the property. I had not seen this until this morning so I didn't really know the dimensions. I had another one Thursday, incidentally, I noticed that the date on this was January 1999. It seemed liked to me that trying to get a hold of the people that were participating in this area is kind of a late date.

FOSTER: Which one are you referring to? The site plan or the elevation plan?

GILLESPIE: The elevation.

FOSTER: Any other questions of Mr. Gillespie? Thank you, very much. Were you at the MAPC meeting?

GILLESPIE: Yes, I was. I may have misunderstood you, what did you say?

FOSTER: I asked if you had been to the MAPC meeting a year ago.

GILLESPIE: No. I had not heard about this until I got this letter in June.

FOSTER: You mean you were not notified of the MAPC hearing when this was held at the CPO?

GILLESPIE: No.

MILLER: I am not sure what MAPC hearing you are referring to?

FOSTER: MAPC heard this as a zoning case right? A year ago isn't that what Mr. Ewy was saying?

EWY: No. I did not know the date of the zoning case. This, Lancaster Addition, Lots 1 and 2 were zoned quite some time ago. I would imagine 15 years ago; I really do not know when our property was zoned. It was not by the present owner. It was platted and zoned in this configuration prior to our involvement. The Planning Commission that I am speaking about concerns the vacation of that utility easement on our half and our side of the property line.

FOSTER: This was perhaps zoned for another project at an earlier date that did not materialize.

EWY: Perhaps.

FOSTER: Are there other people here to speak to this? Please come forward.

MICK FARRELL, 841 HOLYOKE: I represent a different viewpoint, I guess, than the other people who have spoken. I own the home at 841 Holyoke. I have no long-term ties to the area. I bought the home a little over a year ago as an investment and then spent time and money in preparing that as a rental. It is currently rented. I do have concerns and although I say that I am speaking from a different standpoint, I support what the other homeowners have said earlier. The only other thing really that I wanted to point out is that the property that I own is effected, in perhaps, in a different way, and more significantly. In that the depth of my property off of Holyoke, is, and I do not understand how this happened. But, it is not a deep property. So that any setback from the west side of my property is a reduction in that is going to bring the project much closer to my actual residence, then I believe would be the case in the other homes. At this point, I am not prepared to speak. But, I would guess that from the west side of my house to my property line is perhaps 12 to 15 feet and the adjacent house to the south of me which Jan owns. I would guess that the property is maybe 20 feet deeper than my own, so that the impact on my house is 20 feet closer than it would be to Jan's. I think they have a legitimate concern in any reduction of the setback to the other homes. I just wanted to point that out. I think there are medications that could be brought into this as far as landscaping perhaps underground utilize and that sort of thing. But, those would help but they do not answer the setback questions I do not believe.

FOSTER: You think there could be more landscaping in this compatibility area?

FARRELL: I have not had a chance to see this. I have my own ideas but I can not react to what has been put forward.

FOSTER: You understand that there is a utility easement there?

ROGERS: Was your home built onto in the back at one point and time?

MURCH: His house that he owns, was actually the lot the faced Country Club Place and a more narrow width but that was the way that some of these homes were built back in the 1917 and 1920 year.

SWANN: Does the alley go clear through that block?

MURCH: The alleyway? It used too it ran from Hillside to Holyoke, yes.

SWANN: It does not now?

MURCH: No.

SUMMERHAYS: It is vacated and has overhead power lines I believe running down it.

MILLER: Mr. Chairman, whenever you are through, I, need to clarify a comment.

FOSTER: Yes, please.

MILLER: On your site plan and on the back of your staff report, I want to make sure that there was not confusion here. From the properties to the east, there are approximately 40 to 45 feet from the rear of their property lines to the closest part of the building that they have. The only issue that staff had on that eastside was that the dumpster is located within 15 feet of that property line and really needs to be 20 feet. But, as far as the compatibility setback on the building, they are within the 25 feet that they need. The other thing that I want to point out, that on the south side there if you look at the lot configurations there, there are two lots going from the west to the east. And then a small portion of the third lot over are involved in the issue of being within 25 feet. I want to make sure that you were clear on where the conflict is coming in.

FOSTER: Does 20 feet get the dumpster as far away as possible? Is that the limit?

MILLER: Twenty feet is the minimum as far as the code is concerned. You may want to require more.

PITTS: I would like some clarification as to where the dumpster is on here.

DISCUSSION AWAY FROM MICROPHONE:

PHILLIPS: I need a clarification from the applicant if that is allowable, it is a numbers question. This is the building at 15,375 square feet I am assuming that is on the ground floor, the first floor? How many feet in the occupied basement?

DIXON: Yes that is correct. The basement comes to a total of just under 22, about the front fourth of the building.

PHILLIPS: That is what parking is based on?

DIXON: Yes. We just barely meet the parking requirement for number of stalls.

PHILLIPS: My only comment for the application is 15,000 here, you may want to clarify that, because the total building is not like a house. You have to count the occupied space in the basement, because they are complying with the requirement for parking. Is there an elevator in the building?

DIXON: There is an elevator.

FOSTER: Is there another party that wishes to speak? You mean all these people and nobody else wants to speak? I think we will go back to the applicant and see if they have any comments and rebuttal.

EWY: I will just take a moment to address certain comments that had been made, the 15,000 figure was simply an statement of the footprint itself of the building and was not intended to, we knew that we were okay with parking. As you heard Dale mention, several of the homes are impacted but several of the homes are not an issue with this particular variance as we are trying to waive the compatibility setback requirement from the 25 feet. I would take issue with one comment that was issued by Mr. Gillispie, and that is the assumption that we had entered into the purchase of the property and the development of this property understanding our setbacks as being 20 feet along Country Club Place and 25 feet along the southern property line. As I mentioned in my initial discussion and for the record, in the general office district this setback would be a 10-foot side yard setback. Very common and very evident. The thing that we missed and quite a few people missed in reviewing this design, is that one paragraph tucked back in the zoning code that dealt with compatibility setbacks which triggered an additional sliding scale, and an additional 5 feet increments of additional setback capped to 25 feet. So I think on behalf of our clients, I think I just wanted to address the fact that we entered into this design understanding that we had a 20-foot setback along Country Club Place and a 10-foot side yard setback. No more and no less.

Some of the issues that were brought out are some of the issues, quite frankly, were directed to me last Thursday evening and a lot of these had to do with sites, site development issues, the Construction Company whether or not they were going to confine the site for safety reasons.

That is a key construction issue how they cordon off the site as they raze the trees. It was mentioned that these trees of quite mature age had been raised. I do not think any of us here that have seen development occur are too shocked by the site grading and the site preparation that takes place on these types of properties. Understand that some of these trees and the majority of these trees were located in this easement that we spent some time talking about. They would have either been taken, they were taken down by us for obvious site preparation, they could have easily been taken out by city crews, or of course by the utility companies themselves. There was no simple way to protect those trees. Again, I believe, also, that some of the safety issues with the demolition with some of these homes will be taken care of with the applicable rules and regulations of the City. With that I will turn this over to Mr. Dixon and Mr. Summerhays.

SUMMERHAYS: Just briefly, I think this is a classic case of our not communicating well with some neighbors and I personally I can't satisfy those who do not want a building there. It is zoned, we purchased it on that basis and we can design a building on the site. We believe that the hardships in making the adjustments are significant, we believe the case has been made and the staff has supported that and I do think that those who know that there is going to be a building there, I believe that we can assuage most of their concerns. Those who do not want a building there I can not help. The property is zoned for that purpose, and it is a permitted use and there will be a building there. So if time is important in this issue it is important to us. But their homes and communicating with them is important too and we are happy to return to have some excellent dialogue with them to evaluate options that might be available.

PHILLIPS: You did mention earlier that obviously a two-story would allow you to forgo all of this.

SUMMERHAYS: Frankly our other options though they do not meet the function well of the family practice residences program which has been undersized from facility standpoint for sometime. We wouldn't need to come back with those alternatives however, if we would have had the time to sit with these people, those who are willing, to allow a building there, that they really do not have a say on that, there will be a building there because it is zoned for that purpose. I believe they would have selected the plan that we presently have designed because I am confident after months of review it is less impactful on the neighborhood than any other option that exist. I am afraid that given the lack of communication and the emergency "nature" of their lack of information will cause them to impale themselves on their own sword in effect.

Because a two-story building adjacent to their homes is just not or even the parking impact of 95 stalls of parking adjacent. On that revised plan you have not seen that, it is 80. Under the new plan where we put it out on the west though we have some serious utility easement relocation problems that can be handled and it does put a hardship on the project. But, nevertheless it does allow us more parking next to their homes, which is an advantage to the clinic. Our client would like that. We do not think that is in the interest of the neighbors, we do not think a two-story building is in the interest of the neighbors, but those are the two options, we can do those without a request coming before you. But the three homes that are effected by this setback we think would be more favorably effected by this plan then the options that exist. If we had some time with them I feel like they would feel the same way.

PHILLIPS: Will, while you are here since you are talking about time with them, do you feel that it would be in your best interest then for us to continue and take a vote today? Or would you like to defer while you have a chance to discuss this with them and possibly get a more favorable vote. The voting numbers you need to pass this.

SUMMERHAYS: My own feelings are yes, to have a vote today for our purposes. One is, I do not want neighbor's unhappy with me. I have a contract, with a contractor that has a portion in there that they are required on neighbor communication relations, dust control, etc. and if they do not spend it they have to pay me back from the superintendents wallet.

PHILLIPS: Let me make sure I understand. The yes was for a deferment. You would prefer that? Or you would prefer a vote today?

SUMMERHAYS: I would prefer a deferment to communicate for the two reasons: One, they deserve it, I do not think they have had it. They deserve that communication and to noodle and get in the trenches with this design to see and understand it. I think they deserve that. I secondly, I think it is a disadvantage to us not having had that communication. Thank you.

FOSTER: Anyone else to speak? I will confine the discussion to the Board.

PHILLIPS: Motion is confined to the Board now? Since I was the last to speak, maybe I will just finish up since I have this thought. As this thing has progressed, I think it has become obvious to me that part of the problem is that there has been little communication between the two groups. It was obvious from the CPO report and without holding up our agenda with all due respect to staff and how they like to proceed with these things, I really think that since we have heard from the applicant that he would consider a deferment. I would like to make a motion from that standpoint, because I do think that we have done this in situations before where there have been some conflicts. I go back and forth because I live in a neighborhood very similar to this, near Friends University. Every time there is a problem like this or an intrusion, yes, you do feel an impact but I have seen that were so applicable put your apple yourself on your own sword. A two-story building 25 feet away or a one-story building 12 feet away, I think they deserve to make that decision. I think that given the fact that we do have this sort of conflict here, and the applicant is willing to allow for another 30 days, unless, we have just got a huge agenda for July, Dale, I would like to recommend to the Board or at least have this Board entertain the idea of a deferment for this case. I obviously welcome to hear the Board's thoughts on the rest of this. I think in the long run, it is best regardless of how we vote if we can give them a chance to talk. Because of regardless of what happens in the future on the residential side, that building is going to be there and the interest of both parties I think it to me feels like the right thing to do right now. Maybe it will give them a chance to find some option that maybe moving the building back a little bit. Maybe something where they could move it to 15 feet which might persuade the neighbors. But I am just thinking that I am hearing that the applicant would entertain a motion to defer and if that is what the Board feels like I am for that.

FOSTER: Mr. Phillips, my concern to add to yours is the location of the dumpster. Having been a victim of a rather noisy dumpster from time to time, I am rather used to those complaints and so it does concern me. I do not know where else you can put it but certainly it is something that does need to be address. It is something that really bothers people. You have heard Mr. Phillips suggestion is there any other discussion? Is there a motion? Do I hear a motion then to continue this case until the July meeting, which will be July 27th?

PHILLIPS moved **PITTS** seconded to continue this case to July 27th, 1999.

FOSTER: Any further discussion?

MOTION carries 5-0.

PHLLIPS: I would like to make a comment. I appreciate the neighborhood coming forward because it is difficult to take time off to meet and to obviously be the last agenda items, regardless of how short some of the others are. But, also the willingness of the applicant to be able to continue, because 30 days on a schedule like this but, obviously thirty days in the long run, I hope it will be advantageous to both groups. So I really have to appalled both sides of this case, we do not see this all of time.

SIMMERING: I did provide the sign-in sheet so, if you will please sign-in and any information that is available to our office will be mailed out.

FOSTER: We have another item. I see that JR. Cox is not here. Is there any report that anybody is aware of from Central Inspection? We have not seen J.R. Cox for awhile.

MILLER: He was here yesterday and pulling out reports and was getting prepared for today so I am not sure what has happened.

FOSTER: It does say other matters, let me just ask, have you had any opportunity to meet with the County Board of Zoning Appeals to convey our ideas on that.

MILLER: They were to have discussed that at their last meeting, but it ran late and they deferred it to their next meeting.

FOSTER: Let me ask our counsel, what is the status of the last case that was possibly going to court?

DICKGRAFE: It was filed, Slawson has intervened in the case, and was going to, and that is the last I heard. I have not seen a final order for intervening. It is set for trial I believe the first part of September. That would give us sixty days to get the record together and to do any discover which probably will be limited just to written discover. No dispositions would be my thought at this point.

FOSTER: Thank you. Looking forward to July, I think some of the terms of some of our terms will be up. I think my term is up and I think Keith's also. I think July 1, 1999, is the date and so we might just to let everybody know elections then would be for the July meeting on the Agenda. I assume that will be the last item on the agenda then for July.

MILLER: Which will be?

FOSTER: Elections, I think traditionally we have at that on the end of the agenda of the meeting. Any other discussion? Do I hear a motion to adjourn?

PITTS moved **ROGERS** seconded.

MOTION CARRIES 5-0.